

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WOODROW FLEMMING,

Plaintiff,

9:09-CV-0005 (LEK/GHL)

v.

BRIAN FISCHER, NYS Commissioner, *et al.*,

Defendants.

APPEARANCES:

WOODROW FLEMMING
Plaintiff, *pro se*

LAWRENCE E. KAHN, U.S. DISTRICT JUDGE

DECISION and ORDER

By Decision and Order filed January 20, 2009 (“January Order”), the Court found that Plaintiff Woodrow Flemming (“Plaintiff”) was subject to the three strikes provision of 28 U.S.C. § 1915(g) and did not allege that he was exposed to imminent danger of serious physical injury at the time that he filed his Complaint. Dkt. No. 5. Accordingly, the Court denied Plaintiff’s *in forma pauperis* application and directed him to pay the full filing fee of \$350.00 within thirty days if he wished to proceed with this action. *Id.* Following issuance of the January Order, Plaintiff sought leave to pay that fee in seven monthly installments. Dkt. No. 6.¹ In a Decision and Order filed on February 3, 2009 (“February Order”), this Court advised Plaintiff that pursuant to 28 U.S.C. § 1915, the federal courts may authorize a person demonstrating sufficient economic need to commence and prosecute an action without prepayment of the filing fee. Dkt.

¹ Plaintiff asked to pay \$50.00 each month. Dkt. No. 6. Plaintiff did not submit any payment in support of his request.

No. 7. A prisoner proceeding *in forma pauperis* is required to pay the filing fee over time from funds available in his or her inmate account. 28 U.S.C. § 1915(b).² However, in the case of an inmate barred by the “three strikes” rule of 28 U.S.C. § 1915(g) from proceeding *in forma pauperis*, the filing fee must be paid **in full** in order for the action to proceed. Dkt. No. 7 at 2. Plaintiff’s request to pay the filing fee in installments was denied. Id. Plaintiff appealed the February Order to the Second Circuit Court of Appeals. Dkt. No. 10. The Second Circuit dismissed the appeal because it lacked an arguable basis in law or fact. Dkt. No. 16.

Presently before the Court is what appears to be Plaintiff’s request for relief from judgment. Dkt. No. 18. Plaintiff contends that this action was dismissed in error. Dkt. No. 19. Plaintiff says that he “never said that [he] would not pay” the filing fee. Id. at 1. Plaintiff states that it was the Clerk of the Court that failed to comply with the prior Orders of this Court by not sending Plaintiff’s inmate authorization form to Plaintiff’s facility so that payments could be made from Plaintiff’s inmate account. Id. Plaintiff misunderstands the ramifications of being denied *in forma pauperis* status as a result of having three strikes. As previously set forth in the February Order, once an *in forma pauperis* application is denied, a plaintiff is required to pay the entire \$350.00 filing fee at once. In that case, the inmate authorization form, which permits installment payments, **is not sent to the facility.** Plaintiff’s argument is therefore without merit. In any event, Plaintiff is advised that Judgment has not yet been entered in this action because Plaintiff was granted an extension until July 24, 2009 to pay the entire filing fee of \$350.00. Dkt. No. 17. Accordingly, Plaintiff’s request for relief from judgment is **denied.**

² This is, in fact, an installment payment method although the amount of the payments may fluctuate depending upon the balance in the inmate’s prison account. See 28 U.S.C. § 1915(b).

Since Plaintiff indicates that he wishes to pay the filing fee for this action, the Court will grant Plaintiff one **final** extension until August 7, 2009 to pay the \$350.00 fee. Plaintiff must send the entire payment to the Court by that date or this action will be dismissed **without prejudice without further order of the Court**. Plaintiff must arrange for remittance of this fee through his facility on his own; the Clerk will **not** forward Plaintiff's inmate authorization form to the facility.

WHEREFORE, in light of the foregoing, it is hereby

ORDERED, that Plaintiff's motion to vacate judgment (Dkt. No. 18) is **DENIED**; and it is further

ORDERED, that Plaintiff comply with the terms of this Court's January Order (Dkt. No. 5) requiring payment of the entire filing fee; and it is further

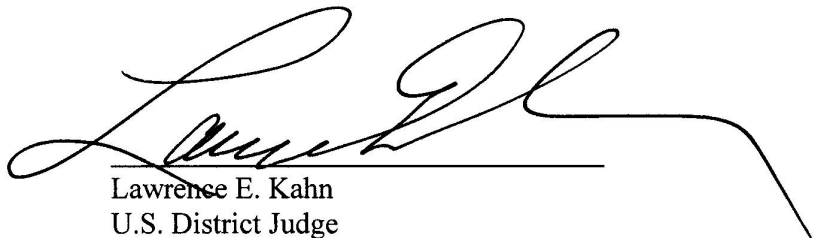
ORDERED, that the deadline for payment of the filing fee is **August 7, 2009**; and it is further

ORDERED, that if Plaintiff fails to pay the entire filing fee of \$350.00 by August 7, 2009, the Clerk shall enter judgment dismissing this action **without prejudice** without further Order of this Court; and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on Plaintiff.

IT IS SO ORDERED.

DATED: July 10, 2009
Albany, New York



Lawrence E. Kahn
U.S. District Judge